VZCZCXRO7040
RR RUEHMA RUEHPA
DE RUEHDK #0112/01 0121544
ZNR UUUUU ZZH
R 121544Z JAN 07
FM AMEMBASSY DAKAR
TO RUEHC/SECSTATE WASHDC 7317
RUCPDOC/USDOC WASHDC
INFO RUEHZK/ECOWAS COLLECTIVE
RUEATRS/DEPT OF TREASURY WASHDC
RUCPCIM/CIMS NTDB WASHDC
RUEHLMC/MCC WASHDC

UNCLAS SECTION 01 OF 07 DAKAR 000112

SIPDIS

SIPDIS

STATE FOR EB/IFD/OIA - JNHATCHER, AF/EPS AND AF/W
STATE PLS PASS USTR - JSHRIER AND OPIC - RO,SULLIVAN
USDOC FOR ITA/ATAYLOR
TREASURY FOR DO - GCHRISTOPOLUS

E.O. 12958: N/A
TAGS: EINV KTBD OPIC EFIN USTR ETRD SG
SUBJECT: SENEGAL: 2007 INVESTMENT CLIMATE REPORT

DAKAR 00000112 001.2 OF 007

SUMMARY

¶1. Senegal offers investors political stability, democracy, advanced telecommunications infrastructure, an advantageous geographic location, a bilateral investment treaty with the United States, low inflation, a currency pegged to the euro, easy repatriation of capital and income and abundant semi-skilled and unskilled human resources. Despite these obvious strengths, overly rigid and demanding labor laws, lack of clear title to property outside the greater Dakar area and an inefficient, and occasionally corrupt, judiciary have restrained foreign investment. Judicial, tax, customs and regulatory decisions are frequently inconsistent, tardy and non-transparent. Although Senegal does have a &one-stop8 investment agency, it can take well over a year to start a business. The country,s Investment Code offers incentives to companies willing to locate off the Cap Vert peninsula. Senegal accepts binding foreign arbitration of investment disputes. French companies are the largest foreign investors, and U.S. direct investment is about USD 100 million. END SUMMARY.

OPENNESS TO FOREIGN INVESTMENT

¶2. The Government of Senegal officially welcomes foreign investment, but non-transparent regulation combined with high factor costs are obstacles for potential investors. There is no legal discrimination against businesses conducted or owned by foreign investors. There are no barriers regarding 100 percent ownership of businesses by foreign investors in most sectors. In some key sectors such as electricity, telecommunications, water and mining, foreign investors may have majority control, but may not acquire 100 percent ownership.

¶3. In recent years, Senegal has pursued a privatization program, and most of the country,s most important and strategic parastatals have been fully or partially privatized, including the peanut processing plant SUNEOR (formerly SONACOS) (2005), the railroad company TRANSRAIL as a public-private partnership (2003), the national airline Air Senegal International (2000), the telecommunication company SONATEL (1997), the water company SONES (1996), and the phosphate company SSPT (1990). Senelec, the country,s electricity purchasing and distribution monopoly, remains the most significant state enterprise yet to be privatized. The Government was unsatisfied with previous efforts to privatize

Senelec and in December 2000 re-acquired a controlling share. In addition, the Government is reportedly engaged in negotiations with private investors on divesting its majority interest in Industries Chimiques du Senegal (ICS), a phosphate processor and the country,s largest industrial concern. In 2006, the Government purchased 12.3 percent and 11.3 percent from shareholders Total and Mobil/Exxon to establish a plurality control of 33.6 percent of the petroleum refinery company SAR.

¶4. The Government of Senegal is reportedly also considering three additional actions in the Telecom sector: 1) the sale of its remaining shares in SONATEL; 2) renegotiating the financial terms of the contract with TIGO, the second mobile operator; and 3) authorizing a third telecom operator in Senegal. According to the World Bank, these three actions could generate up to USD 1 billion, which is almost the equivalent of the government,s annual investment budget.

¶5. While the Government does not screen investments, foreign investors are encouraged to utilize the &one stop8 service of Senegal,s Investment Promotion Agency (APIX) for registration and obtaining approvals needed to operate a business in Senegal. The Government established APIX in 2000 in order to attract foreign investors and simplify the administrative procedures they face. APIX changed its status in December 2006 into a Societe Anonyme, &APIX S.A.8 to open its capital to private investors. The World Bank,s 2006 &Doing Business8 survey (www.doingbusiness.org) ranked Senegal 146 out of 175 countries evaluated, noting that it takes over 57 days for obtaining all necessary governmental permits for opening a business at a cost of 108 percent of average annual income (approximately USD 600).

¶6. The Investment Code, updated in 2004, remains Senegal,s main body of law regulating foreign investments. The Code provides basic guarantees for the repatriation of profit and

capital and equality of treatment. It also specifies tax and customs exemptions according to the size of the investment, classification of the investor (SME versus a larger corporation), and location (investments outside of Dakar receive longer periods of exoneration from taxes). Following IMF and World Bank recommendations, the GOS established the Presidential Investors Council (PIC) in November 2002, designed to improve the business climate and reduce obstacles to domestic and foreign private investment. In 2005, the PIC successfully lobbied for some &pro-business8 changes in Senegal,s tax code, which lowered the corporate tax rate from 33 to 25 percent, eliminated the equalization tax on the informal sector, and lowered the VAT on tourist industries from 18 percent to 15 percent.

¶7. There is no provision in Senegalese law permitting domestic businesses to adopt articles of incorporation or association that limit or control foreign investment. There is no pattern of discrimination against foreign firms making investments in Senegal. Both foreign and domestic firms tend to cite the same problems in doing business in Senegal -) inefficient regulation and bureaucracy, ineffective commercial courts, labor laws that makes it difficult to fire for cause, and occasional disputes over customs valuations and taxation.

CONVERSION AND TRANSFER POLICIES

¶8. Commercial transfers are normally carried out rapidly and in full by local banking institutions. Companies find that the import and export of funds can be accomplished quickly and easily as commercial bank transactions. The African Financial Community franc (CFAF), used by Senegal and 13 other African countries, is pegged to the euro at the rate of 100 CFAF equals 0.152 euros. At present, there are no restrictions on the transfer or repatriation of capital and income earned or on investments financed with convertible

foreign currency. However, the Government does limit the amount of foreign exchange individuals may obtain for trips outside Senegal. Outgoing travelers may obtain a maximum of 6 million CFAF in euros or other foreign currency/travelers checks (approximately USD 12,000) upon presentation of a valid airline ticket at banks. The black market for currency exchange is limited in Senegal.

EXPROPRIATION AND COMPENSATION

¶9. In recent history, there have been no major expropriations in Senegal. In 2000, the Senegalese Government ended the management contract with the French-Canadian consortium running Senelec, the national electricity company. The Government and the consortium negotiated an acceptable outcome, under which the Government repurchased the 34 percent shares held by the consortium for 45.2 billion CFAF (USD 90.4 million). In September 2000 the Government announced it was revoking the license of Sentel, a cellular telephone service provider majority owned by Millicom International Cellular (MIC), alleging failure to meet certain contractual obligations. Sentel vigorously contested those allegations. In August 2002, the GOS and MIC signed an accord under which the company,s original contract was honored.

¶10. There have been several instances recently in which the Government has revoked minerals concessions or contracts to develop housing projects, alleging failure to pay taxes or meet contractual obligations. Foreign investors have generally failed to obtain compensation or damages through the courts. In other cases, the Government has failed to intervene to resolve disputes between foreign investors and firms with local ownership or substantial local participation. This failure to provide mediation, or any decision in some cases, has been noted as less-than-equitable treatment for foreign investors. However, there is no indication of discriminatory treatment against U.S. investors.

DISPUTE SETTLEMENT

¶11. Senegal and the U.S. have a Bilateral Investment Treaty, which allows for international arbitration, and Senegal is a member of the International Center for the Settlement of Investment Disputes (Washington Convention). In theory, Senegal accepts binding foreign arbitration of investment disputes. Foreign creditors receive equal treatment under

Senegalese bankruptcy law in making claims against liquidated assets. Monetary judgments are normally in local currency. U.S. companies entering the Senegalese market should ensure that their contracts with third parties make a provision for binding international arbitration in case of a dispute.

¶12. While Senegal has well-developed commercial and investment laws, and a legal framework for regulating business disputes, settlement of disputes within the cumbersome, slow and occasionally non-transparent Senegalese judiciary can be a significant burden to business. Senegal has an arbitration center administered by the Dakar Chamber of Commerce, but the arbitration process is practically untested.

¶13. Few judges or lawyers are conversant in commercial laws. Court cases are expensive and rarely resolved expeditiously. Decisions can be inconsistent, arbitrary and non-transparent. Foreign investors have found it difficult to fire employees for cause or malfeasance. Foreign firms are often sued in the Senegalese courts by terminated employees who are frequently awarded damages and placement in their former positions. Although these decisions are sometimes overturned on appeal, the appeals process is costly and time consuming. Foreign firms in Senegal often cite frustrations with labor law and arbitrary rulings by courts on labor cases as their number one frustration in doing

business in Senegal.

PERFORMANCE REQUIREMENTS AND INCENTIVES

¶14. Senegal,s Investment Code defines eligibility for investment incentives according to a firm,s size and type of activity, the amount of the potential investment, and the location of the project (with higher incentive benefits for investments outside of the capital, Dakar). To qualify for significant investment incentives, firms must invest above 100 million CFAF (approximately USD 200,000) or in activities that lead to an increase of 25 percent or more in productive capacity. New enterprises are eligible for five years, exoneration from Senegal,s payroll tax (eight years from investments outside of Dakar). Investors may also deduct up to 40 percent of retained investment over five years. However, for companies engaged strictly in &trading activities,8 defined as &activities of resale in their existing state products bought from outside the enterprises,8 investment incentives might not be available.

¶15. Eligible sectors for investment incentives include agriculture, fishing, animal-rearing and related industries, manufacturing, tourism, mineral exploration and mining, banking, trading complexes, and cultural activities. All qualifying investments benefit from the &Common regime,8 which includes two years of exoneration from duties on imports of goods not produced locally for small and medium sized firms, and three years for all others. Also included is exoneration from direct and indirect taxes for the same period.

¶16. Exoneration from the Minimum Personal Income Tax and from the Business License Tax is granted to investors who use local resources for at least 65 percent of their total inputs within a fiscal year. Enterprises that locate in less industrialized areas of Senegal benefit from exemption of the lump-sum payroll tax of three percent, with the exoneration running from five to 12 years, depending on the location of the investment. The investment code provides for exemption from income tax, duties and other taxes, phased out progressively over the last three years of the exoneration period. Most incentives are automatically granted to investment projects meeting the above criteria as well as to those with the &Enterprise Franche d,Exportation8 (EFE) status, which is directed at export-oriented firms.

¶17. Further, an existing firm requesting an extension of such incentives must be at least 20 percent self-financed. Large firms -- those with at least 200 million CFAF (USD 400,000) in equity capital -- are required to create at least 50 full-time positions for Senegalese nationals, to contribute the hard currency equivalent of at least 100 million CFAF (USD 200,000), and keep regular accounts that conform to Senegalese standards. Furthermore, firms must provide APIX with details on company products, production, employment and consumption of raw materials.

RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

¶18. In addition to traditional guarantees offered to investors, e.g., free transfers of capital and income, and national treatment, private entities are permitted to establish and own businesses and to engage in most forms of remunerative activity. Foreign nationals are permitted to buy and hold land. Local majority ownership is not necessary. Several of the state-owned firms privatized in the mid to late 1990,s and in the early 2000,s were sold in part or in whole to foreign entities.

PROTECTION OF PROPERTY RIGHTS

¶19. The Senegalese Civil Code, based on French law, enforces private property rights. The code provides for equality of

treatment and non-discrimination against foreign-owned businesses. Property title and a land registration system exist in Senegal, but application is uneven outside of Senegal,s urban areas. Senegal,s housing finance market is underdeveloped and few long-term mortgage financing vehicles exist. There is no secondary market for mortgages or other bundled revenue streams. The judiciary is inconsistent when adjudicating property disputes.

¶20. Senegal is a member of the African Organization of Intellectual Property (OAPI), a grouping of 15 francophone African countries, which has established among its member states a common system for obtaining and maintaining protection for patents, trademarks and industrial designs. Senegal has been a member of the World Intellectual Property Organization (WIPO) since its inception. Local statutes recognize reciprocal protection for authors or artists who are nationals of countries adhering to the 1991 Paris Convention on Intellectual Property Rights. In particular:

¶I. Patents: Patents are protected for 20 years. An annual charge is levied during this period. Trade secrets and computer chip designs are respected.

II. Trademarks: Registered trademarks are protected for a period of 20 years. Trademarks may be renewed indefinitely by subsequent registrations.

III. Copyrights: Senegal is a signatory to the Bern Copyright Convention. The Senegalese Copyright Office, part of the Ministry of Culture, attempts to enforce copyright obligations. The bootlegging of music cassettes and CDs is common and of concern to the local music industry. The Copyright Office undertook actions in 2001, 2002, 2003 and 2006 to combat media piracy, including seizure of counterfeit cassettes and CD/DVDs.

¶21. However, despite an adequate legal and regulatory framework, enforcement of intellectual property rights is weak. In general, the Government lacks the resources or commitment to seize counterfeit goods. Customs screening for counterfeit goods coming from China, Nigeria, Dubai and other centers of illegal production is weak and confiscated goods occasionally re-appear in the market. Nonetheless, there has been a recent effort by Customs to understand the impact of counterfeit products in the Senegalese market place, and officers have participated in trainings offered by manufacturers to identify counterfeit products. Philip Morris International notes that it signed a cooperative MOU with Senegalese Customs whereby a minimum of 60 customs officials will undergo two days of training.

TRANSPARENCY OF THE REGULATORY SYSTEM

¶22. There is no public comment process for proposed laws and regulations. However, the National Assembly debates most substantive legislation. The Government frequently holds public hearings and workshops to discuss proposed initiatives and programs.

¶23. In general, the Government of Senegal favors the principles of free competition. However, some foreign and domestic investors believe that the investment climate in Senegal is worsening. Judicial, tax, customs, and other regulatory decisions are frequently inconsistent, tardy and non-transparent. Procurement decisions often fail to follow government guidelines mandating a free and transparent tender

process. Weak application of labor laws is seen as a disincentive to investment by foreign investors.

¶24. The Government has created several regulatory agencies in sectors seeking foreign investment. Faced with an increasingly liberalized electricity generation sector, the Government has created an electricity regulatory body

responsible for approving investment plans for the power sector, preparing terms of reference for tenders and monitoring prices. In 2003, as the Government moved towards further telecommunications deregulation and the introduction of new products and services, it established a telecommunications regulatory agency. Following new telecom guidelines, a tender was issued in late 2005 for a third global telephone services provider, but the license has yet to be awarded.

EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT
-- -----

¶25. In general, domestic investment is hampered by an under-developed financial sector. A few French-owned banks with conservative lending guidelines and high interest and collateral requirements dominate bank lending. Claims on the central bank have nearly doubled in the past five years to 800 billion CFAF (USD 1.6 billion), indicating excessive liquidity and insufficient loans in the commercial banking sector. Few firms are eligible for long-term loans, and small and medium sized enterprises have little access to credit. However, because the Senegalese banking sector is dominated by foreign banks, foreign investors can take advantage of parent banks in France and the United States (Citibank). U.S. firms also have access to U.S. Overseas Private Investment Corporation (OPIC) and Export-Import Bank (EXIMBANK) facilities.

¶26. Private bond issuances are an emerging topic of some interest, but have yet to make a tangible impact on investment in Senegal, and the infrastructure for expanding business lending, credit risk analysis, skilled commercial law legal specialists and auditors etc . . . does not exist. The West African Regional Stock Exchange (BRVM), headquartered in Abidjan, with local offices in each of the member countries of the West African Economic and Monetary Union (WAEMU or UEMOA) offers member countries additional opportunities to attract increased foreign capital and to give private investors access to more diversified sources of financing. However, to date only two Senegalese companies, Sonatel and ICS, are currently traded on the BRVM. There is no system to encourage and facilitate portfolio investment.

¶27. Legal, regulatory and accounting systems closely follow French models and WAEMU countries present their financial statements in accordance with the SYSCOA system, which is based on Generally Accounting Principles in France.

POLITICAL VIOLENCE

¶28. Senegal is a free and functioning democracy with no history of coup d,etats or military government. However, in 2005 and 2006, human rights organizations expressed concern about the police harassment and arrest of opposition leaders as well as several lawsuits filed against independent media organizations. There have been incidents of sporadic civil disturbances over the past two years, but they have generally taken place in the context of unions or student demands for better conditions. Since October 2006, there have been sporadic violent incidents in the Casamance region often linked to petty banditry or a two-decade-old rebel movement seeking independence for the region. Presidential and legislative elections are scheduled for February 2007.

CORRUPTION

¶29. The potential for corruption is a significant obstacle for economic development and competitiveness in Senegal, in spite of the country,s laws, regulations, penalties and agencies to combat it. Credible allegations of corruption have been made concerning government procurement, dispute settlement, and decisions by the judiciary as well as regulatory and enforcement agencies. Transparency International, in its 2006 Perceptions of Corruption index, ranked Senegal 70th out of 163 countries, moving up seven places from 2005.

¶30. Senegal is a signatory to the UN Anticorruption Convention, and Senegalese authorities have initiated reforms to strengthen the rule of law, increase transparency, and fight corruption. Senegal,s Customs authority has initiated an &action plan8 to combat fraud. Other steps to improve the legal and judicial environment include better training for magistrates and commercial law practitioners, and the establishment of an arbitration court and to adopt new recovery and enforcement procedures consistent with the Harmonization of Commercial Laws in Africa (OHADA), a regional initiative to harmonize commercial codes in Africa.

¶31. Senegal has several government agencies authorized to fight corruption and fraud. These include &L,Inspection Generale d,Etat,8 a cabinet-level office; &La Commission de Verification des Comptes8 and &La Cour des Comptes,8 and Cotecna S.A., a pre-shipment inspection contractor hired by the Government. At a higher level, President Wade has made numerous pronouncements against corruption, but a significant gap persists between the rhetoric and its implementation. A new procurement code was approved in May 2004, but, to date, the President has not brought the code into force; thus, many projects continue to be sole-sourced or receive exemptions from following international tender procedures.

¶32. The Government of Senegal has established a monitoring council for good governance and anti-corruption measures, but has yet to prosecute any cases. In 2005, the country,s financial intelligence unit (CENTIF) began operation, collecting information on suspicious financial transactions from financial institutions. The CENTIF is reportedly pursuing several money laundering and drug money cases. Senegal is also represented by a Financial Action Task Force- (FATF-) style regional body for the 15-member Economic Community of Western African States (ECOWAS), the African Anti-Money Laundering Inter-governmental Group (GIABA), which is based in Dakar.

BILATERAL INVESTMENT AGREEMENT

¶33. Senegal and the United States signed a Bilateral Investment Treaty in 1983. The treaty provides for Most Favored Nation treatment for investors, internationally recognized standards of compensation in the event of expropriation, free transfer of capital and profits, and procedures for dispute settlement, including international arbitration. Senegal has signed similar agreements for protection of investment with France, Switzerland, Denmark, Finland, Spain, Italy, the Netherlands, South Korea, Romania, Japan, and Australia. Senegal has concluded tax treaties with France, Mali, and WAEMU member states. There is currently no tax treaty and no imminent prospect of one between the United States and Senegal.

OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

¶34. EXIMBANK is actively looking for potential projects in Senegal and has a Master Guarantee Agreement with the local offices of the Banque Senegalo-Tunisienne (BST). OPIC has been examining possible investments in Senegal but has no current projects. Senegal is a member of the Multilateral Investment Guarantee Agency (MIGA), an arm of the World Bank.

LABOR

¶35. Unskilled and semi-skilled labor is abundant in Senegal, but there are relatively few highly-trained workers in the fields of engineering, information systems and management. In-country opportunities for these workers are not numerous, and as a result, many look outside Senegal for employment.

¶36. Relations between employees and employers are governed by the labor code, collective bargaining agreements, company regulations and individual employment contracts. There are

two powerful industry associations that represent management,s interests: the National Council of Employers (CNP) and the National Employers, Association (CNES). The principal labor unions are the National Confederation of Senegalese Workers (CNTS), affiliated with the former ruling Socialist Party, and the National Association of Senegalese Union Workers (UNSAS), a federation of independent labor unions. Labor issues are often high on the list of complaints by investors.

FOREIGN TRADE ZONES/FREE PORTS

¶37. Senegal,s Dakar Free Industrial Zone (ZFID) is largely inactive and stopped issuing new licenses in 1999. Firms already located there may continue receiving benefits until ¶2016. Pfizer is located in the ZFID and does some production and packaging for the African market. Senegal,s Free Trade Zone initiatives have largely been replaced with the Entreprise Franche d,Exportation (EFE), which reduces taxes and provides for duty-free imports as noted above.

MAJOR FOREIGN INVESTORS

¶38. The dearth of reliable investment statistics makes it difficult to provide a detailed breakdown of foreign direct investment in Senegal. For the first half of 2004, foreign direct investment inflows were estimated to be USD 94.4 million, but such transactions are highly variable from year to year. FDI assessments also tend to not include the estimated several hundred million dollars per year in remittances, which fuel much of the growth in the real estate as well as capital investments in small and medium size businesses.

¶39. France is overwhelmingly the most important foreign investor, and French interests control many sectors in the economy. Approximately 235 subsidiaries of French groups are present in Senegal, accounting for 25 percent of all formal enterprises. French investors are present in the major multinational import-export firms, shipping companies, banking, food production, mechanical engineering, agribusiness, petroleum distribution, industrial equipment, vehicles, chemicals and pharmaceuticals, tourism and insurance industries. Privatizations in telecommunications and public utilities have confirmed and increased the predominance of France as Senegal,s leading foreign investor with Bouygues present in the water sector and telecommunications giant Orange the operating partner of Sonatel.

¶40. Investments by Senegalese citizens of Lebanese origin are frequently found in light import-substituting industries such as food products, textiles, chemicals, plastics and rubber. Swiss investment is concentrated in food processing with the active presence of the multinational Nestle and a waste management company. Germany, Japan, and South Korea have moderate investments in Senegal. Taiwan was active in Senegal,s fish and canning industry. Indian interests have historically been a major investor in Senegal,s phosphates industry and purchase nearly all phosphate output; India is also providing buses and mini-buses to Senegal. Moroccan investment has substantially increased since Royal Air Maroc took a controlling interest in Air Senegal International in ¶2000. In 2006, China made pledges of significant new investment in Senegal in the coming years, including a 250 MW coal fired power plant.

¶41. U.S. direct foreign investment in Senegal is estimated at approximately USD 100 million. Significant U.S. investors include General Electric, Crown Manufacturing, Colgate-Palmolive, Pfizer, and Citibank. Major U.S. direct investments in Senegal include the 1998 USD 65 million GE Independent Power Production (IPP) gas turbine project and Colgate-Palmolive,s investment in a new toothpaste and

glycerin plant in 2000. Philip Morris has announced plans for a new USD 30 million cigarette factory in Senegal in
¶2007. In 2006, Delta Airlines began non-stop Atlanta-Dakar service, continuing to Johannesburg, South Africa. Also in 2006, Exxon-Mobil ended its presence in Senegal by ceding its distribution rights for a number of African countries, including its 44 service stations in Senegal, to the Libyan firm Tamoil African Holdings Ltd.
JACKSON